

- DRAFT -
AGENCY ASSURANCES: RIGHTS AND ACCOUNTABILITY
April 23, 2003 (Revised 6-12-03)

The National Archives and Records Administration (NARA) has developed an approach for obtaining agency assurances to protect the rights and interests of citizens and to ensure government accountability in the scheduling of temporary records.

When an agency proposes a retention period other than permanent for a body of records, it is difficult to state with absolute assurance that there is zero possibility that the records might be of some assistance in documenting rights of citizens or the government at some point in the future or that the records might help in providing evidence, however indirect, relating to government accountability. However, it is possible to take reasonable measures to protect rights and document accountability while still managing records efficiently and destroying them when their usefulness has expired.

The goal of the proposed agency assurance process is to provide a means for agencies to demonstrate that in proposing retention periods for their records they have taken reasonable measures to identify and protect legal rights and document accountability for the actions of their agencies.

This paper identifies the agency officials that should be responsible for making assurances to NARA regarding temporary retention periods; a description of what these officials are assuring NARA; and a description of how the assurance will be made to NARA.

1. Who Are the Responsible Agency Officials?

Agency officials will be required by NARA to assure that they have reviewed the appraisal and that any temporary disposition instructions in the appraisal generally protect citizen rights and interests, ensure Government accountability, and meet all regulatory, statutory, and other legal recordkeeping requirements. These officials are essentially assuring to the Archivist of the United States that these disposition instructions are appropriate.

The responsible agency officials are:

1. Records officer
2. Senior Program Official responsible for the records listed on the SF 115
3. Senior Attorney in the Office of General Counsel

2. What Assurances Are Responsible Officials Making to NARA?

Below is a short description of what each responsible official is assuring NARA. In each case, the standard is not absolute certitude; it is a statement of assurance at the “to the best of my knowledge” level of certainty.

Records Officer

Consistent with the current agency certification on SF 115, box 6, each agency's records officer is assuring NARA that he/she is authorized to act for this agency in matters pertaining to the disposition of its records; that the records proposed for disposal are not now needed for the business of the agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies is not required, is attached to the SF 115, or has been requested. This is part of the government accountability review.

Senior Program Official

The senior program official is assuring NARA that he/she has taken into account all of the recordkeeping requirements associated with the creation and maintenance of the records related to the program function. This is the basic internal business needs review. This assurance supports the assurances made by the Records Officer.

Senior Attorney in the Office of General Counsel

The agency's senior attorney is assuring NARA that he/she has reviewed the non-permanent dispositions and verified that the retention periods are consistent with the minimum retentions required by applicable laws and regulations. This is the basic citizen and government rights and interests review. He/she is also affirming that all existing lawsuits and potential lawsuits against the agency (to the extent this can be known) have been taken into account in the proposed dispositions.

In exceptional cases, particularly where proposed dispositions will likely be highly controversial, NARA may want the agency to manage and report to NARA on a public review process. These would be instances where the agency published a *Federal Register* notice prior to submitting the schedule to NARA, held public meetings on the records' disposition, or asked for public comments via surveys. This process would be beyond NARA's current responsibility to publish a *Federal Register* notice.

3. How Assurances Will Be Made?

Each of the three Responsible Officials will sign a redesigned SF-115 that will include statements and signature blocks appropriate for each official. Instead of a single box for Agency Certification (like box 6 on the current SF-115), there will be three boxes, one for each Responsible Official, specific to their type of assurance. The following is an example of what this might look like.

Agency Assurance Draft Layout

Records Officer Assurance I hereby affirm that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached _____ page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, <input type="checkbox"/> is not required; <input type="checkbox"/> is attached; or <input type="checkbox"/> has been requested.		
Date	Name and Signature	Title

Senior Program Official Assurance I hereby affirm that I have reviewed the proposed dispositions. To the best of my knowledge, these disposition periods meet the agency's internal business needs and account for all of the recordkeeping requirements associated with the creation and maintenance of the records related to the program function.		
Date	Name and Signature	Title

Senior Attorney Assurance I hereby affirm that I have reviewed the proposed dispositions. To the best of my knowledge, these disposition periods are consistent with the minimum retentions required by applicable laws and regulations. I also affirm that all existing lawsuits and potential lawsuits against the agency (to the extent this can be known) have been taken into account in the proposed dispositions.		
Date	Name and Signature	Title

In the exceptional cases where the agency managed and reported on the public review process, NARA would require a memo from the Senior Program Official outlining why public input was sought in the disposition development process, the method for obtaining the input; and the results of the public comment process. This memo would be attached to the SF-115.